IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HONOURABLE SRI JUSTICE N.V.RAMANA

W.P. No. 23314 OF 2005

Dated: 16th February, 2006

Between:

K.Damodhar

Petitioners

AND

The Depot Manager,
APSRTC, Sangareddy Bus Depot,
Medak District.

Respondents

THE HONOURBALE SRI JUSTICE N.V.RAMANA

W.P. No. 23314 OF 2005
AND
C.C. NO. 27 OF 2006

COMMON ORDER:

The petitioner was appointed as Booking Clerk in 1973 and was posted as Conductor in the year 1974, and subsequently from 1977 to 1987 he worked as Typist, and was promoted as Senior Assistant (Personnel) in 1987.

He worked as such till 16.10.2005, but due to ill-health, he made an application on 12.7.2005 opting for voluntary retirement which was accepted by the respondent by issuing Notification No.P1/693(3)/2005-SRD dated 19.9.2005, effective from 17.10.2005.

While so, the respondent by order No.P1/114(1)/2005-SRD, dated 17.10.2005, placed the petitioner under suspension alleging that he tampered with the acknowledgement dated 21.9.2005 as 24.9.2005 in case No. P-2/1(31)/2005-SRD dated 14.9.2005, being the custodian of the file, which constitutes misconduct under Regulation 28(xxx) of the APSRTC Employees (Conduct) Regulations, 1963, and charge sheet was also issued on the same day calling for his explanation within seven days from the date of receipt thereof. Assailing this order, the petitioner filed the present writ petition *inter alia* contending that in view of the notification dated 19.9.2005, issued by the respondent, retiring him from service with effect from 17.10.2005, the respondent could not have issued the impugned proceedings, placing him under suspension, inasmuch as he was no more an employee of the respondent.

This court, on 3.11.2005, while issuing notice before admission, passed the following order:

> *"…A perusal of the order dated 19.9.2005 discloses that the petitioner was directed to retire with*

effect from 17.10.2005. Petitioner states that he is since retired from service and the impugned order dated 17.10.2005 is served upon him on 24.10.2005, after he retired from service.

Hence, there shall be interim suspension as prayed for. It shall, however, be open to the respondents to proceed with the enquiry but final orders shall not be passed until further orders…"

Subsequently, the writ petition was admitted on 8.12.2005 treating the above order as interim order passed in WPMP No.29890 of 2005.

While the matters stood thus, it is the case of the petitioner that the respondent issued letter No. Dy.Supdt(P)/785(29)/05-SRD dated 7.12.2005 which reads as "…*you are hereby advised to attend for duty immediately*…". It is the contention of the petitioner that since he retired from service with effect from 17.10.2005 in pursuance of the notification dated 19.9.2005 issued by the respondent, the respondent again could not have issued the letter dated 7.12.2005 calling upon him to join duty, and issuance of such letter, amounts to violation of the interim order passed by this court on 3.11.2005. Hence, alleging that the respondent disobeyed the interim order passed by this Court, he filed the contempt case.

The respondent filed counter to the contempt case. A reading of the averments made in the counter would disclose that the respondent in pursuance of the

application of the petitioner dated 12.7.2005, permitted him to retire from service with effect from 17.10.2005 and accordingly issued notification dated 19.9.2005 calling for the dues from the places where the petitioner worked earlier, so as to arrange settlement, but in the meantime he was placed under suspension for tampering of records. It is further their case that the petitioner was not relieved of his duties, and in the meanwhile he filed the writ petition and obtained interim orders on 17.10.2005. It is contended by the respondent that since this court by order dated 3.11.2005, has permitted the respondent to proceed with the enquiry, but not to pass final orders, the respondent in order to complete the enquiry, has called upon the petitioner to join duty, and therefore, the respondent cannot be said to have committed any contempt of the interim orders of this Court.

The learned counsel for the petitioner contends that in view of the interim orders passed by this court on 3.11.2005 suspending the order of suspension, the petitioner already stood relieved from service with effect from 13.10.2005 and as such the respondent cannot direct him to rejoin duty.

Now the question that arises for consideration is whether in view of the notification dated 19.09.2005, issued by the respondent, the petitioner stood retired from

17.10.2005 or whether he continued to be an employee of the respondent.

It is the contention of the petitioner that in view of the notification dated 19.09.2005, issued by the respondent retiring him from service w.e.f. 17.10.2005, the petitioner should be treated as having retired from service, and having regard to the interim order dated 03.11.2005, passed by this Court, staying the operation of the order dated 17.10.2005 passed by the respondent, placing the petitioner under suspension, the respondent could not have issued proceedings dated 07.12.2005 calling upon him to attend for duty immediately, for it amounts to violation of the interim orders.

I am unable to accept this contention of the petitioner. The notification dated 19.09.2005, which the petitioner contends retired him from service w.e.f. 17.10.2005, in fact, was issued by the respondent calling for the due of the petitioner from the places where he worked previously. The said notification, in fact, did not relieve the petitioner from service. The petitioner contending that since he retired from service, the respondent could not have placed him under suspension, filed the writ petition, and obtained interim stay of the order of suspension dated 17.10.2005. Inasmuch as the notification dated 19.09.2005 did not retire the petitioner

from service, the petitioner continued to be in service after 17.10.2005, and as on 03.11.2005, when this Court passed interim order, suspending the order of suspension dated 17.10.2005, passed against the petitioner, the petitioner was in the service of the respondent, and therefore, no exception can be taken to the impugned order dated 17.10.2005 passed by the respondent, placing the petitioner under suspension. Having regard to the fact that this Court, vide order dated 03.11.2005, while staying the operation of the order dated 17.10.2005, passed by the respondent placing the petitioner under suspension, had given liberty to the respondents to proceed with the enquiry and not to pass final orders, no exception can be taken to the order dated 07.12.2005, issued by the respondent calling upon the petitioner to attend for duty immediately, which obviously is for completing the enquiry initiated against the petitioner. Therefore, by issuance of the order dated 07.12.2005, calling upon the petitioner to attend for duty, the respondents cannot be said to have committed violation of the interim order dated 03.11.2005, passed by this Court, staying the operation of the order of suspension.

Be that as it may, though the petitioner admittedly opted for voluntary retirement, the fact remains, the respondent did not retire him from service. Inasmuch as

this Court had upheld the impugned order of suspension, as also the subsequent orders issued by the respondents calling upon the petitioner to attend for duties, which obviously is for completing the enquiry initiated against the petitioner, it is appropriate that the enquiry initiated against the petitioner be completed expeditiously.

Hence, the respondents are directed to complete the enquiry initiated against the petitioner within a period of two months from the date of receipt of a copy of this order. The petitioner shall co-operate with the respondents in completing the enquiry expeditiously without taking adjournments. During suspension period, the petitioner shall be paid subsistence allowance.

With the above directions, the writ petition is dismissed and the contempt case is closed. No costs.

N.V. RAMANA, J.

February 16, 2006
MAS/KSR

THE HONOURABLE SRI JUSTICE N.V.RAMANA

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